

Act, including these regulations, has occurred.

(v) *Failure to request a hearing.* If the person fails to file a written request for a hearing within the specified time period, the person relinquishes his or her right to a hearing. If the person does not request a hearing, the Assistant Secretary for Defense Programs shall transmit his or her recommendation, with any supporting materials, to the Secretary for the Secretary's final determination on the imposition of the civil penalty.

(3) *Final determination.* The Secretary makes the final determination on the disposition of a violation. The Secretary may uphold, compromise or mitigate, or remit any penalty recommended by the Assistant Secretary for Defense Programs.

(4) *Appeal.* A person whom the Secretary has determined violated section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, may appeal the determination of the Secretary to an appropriate United States District Court.

(5) *Collection of Penalty.* (i) The Secretary may request the Attorney General to institute a civil action to collect a penalty imposed by the Secretary under this section.

(ii) The Attorney General has the exclusive power to uphold, compromise or mitigate, or remit any civil penalty imposed by the Secretary under this section and referred to the Attorney General for collection.

(b) *Criminal penalty.* Any person who violates section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations may be subject to a criminal penalty under section 223 of the Atomic Energy Act. In such case, the Secretary refers the matter to the Attorney General for investigation and possible prosecution.

[50 FR 15822, Apr. 22, 1985, as amended at 62 FR 46184, Sept. 2, 1997]

## PART 1018—REFERRAL OF DEBTS TO IRS FOR TAX REFUND OFFSET

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AUTHORITY: 31 U.S.C. 3720A; Pub. L. 98-369; 98 Stat. 1153.

SOURCE: 54 FR 773, Jan. 9, 1989 (interim), unless otherwise noted.

### § 1018.1 Purpose.

This part establishes procedures for the Department of Energy (DOE) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to DOE. It specifies the agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to DOE.

### § 1018.2 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(4) With respect to which DOE has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is

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not past-due or legally enforceable, has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by DOE to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00;

(6) With respect to which DOE has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least \$25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402-6T relating to the eligibility of a debt for tax return offset have been satisfied.

### § 1018.3 Administrative charges.

In accordance with 10 CFR part 1015, all administrative charges incurred in connection with the referral of the debts to the IRS shall be assessed on the debt and thus increase the amount of the offset.

### § 1018.4 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after the DOE makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The DOE's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the DOE's Notice of Intent, DOE intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

### § 1018.5 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by DOE.

(c) *Review of the evidence.* DOE will consider all available evidence related to the debt. Within 30 days, if feasible, DOE will notify the debtor whether DOE has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

### § 1018.6 Departmental determination.

(a) Following review of the evidence, DOE will issue a written decision which will include the supporting rationale for the decision.

(b) If DOE either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If DOE cancels its original determination, the debt will not be referred to IRS.

### § 1018.7 Stay of offset.

If the debtor timely notifies the DOE that he or she is exercising the right